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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/566,115

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EXAMINER

WALKER, NED ANDREW

ART UNIT

PAPER NUMBER

3781

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/566,115	<b>Applicant(s)</b> ALVARES ET AL.	
	<b>Examiner</b> NED A. WALKER	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/24/06</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Drawings***

1. New corrected drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121 are required in this application because:

The drawings are improper because they contain center lines. Views must not be connected by projection lines and must not contain center lines. Refer to 37 CFR 1.84(h). See Figure(s) 1-5.

The drawings contain an exploded view(s) missing bracket(s). Exploded views, with the separated parts embraced by a bracket, to show the relationship or order of assembly of various parts are permissible. When an exploded view is shown in a figure which is on the same sheet as another figure, the exploded view should be placed in brackets. Refer to 37 CFR 1.84(h)(1). See Figure(s) 2.

The drawing sheet numbering is formatted improperly. The drawing sheet numbering must be clear and larger than the numbers used as reference characters to avoid confusion. Refer to 37 CFR 1.84(t). See pages 1-4.

2. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

***Specification***

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical or inventive feature set forth in the application.

***Claim Objections***

4. Claim 9 is objected to under 37 CFR 1.75(c) as being in improper form because a dependent claim should refer to other claims in the alternative only. Since the claim does not properly list its claimed dependency, it is considered to be a claim that does not refer to a preceding claim and is therefore improper. See MPEP § 608.01(n).I.B.2. Accordingly, the claim has not been further treated on the merits.

5. Claims 3 and 9 are objected to because of the following informalities: an extraneous parenthesis is present in line 3 and line 2, respectively, of the claims and should be deleted. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. The preamble contains indefinite claim language comprising "for a can of the type." Appropriate correction is required.

9. Claim 1 defines the scope of the lid in terms of the lid's relationship to various parts of the can such as "projecting radially outwardly from the seat" in line 5; however, the claim does not explicitly define a lid and can in combination. The claim must be amended to positively recite the combination or the features of the lid must be defined by other explicit means.

10. Claims 2-9 are rejected for incorporating the errors from their respective parent claim by dependency.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**12. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kenyon, 2nd (US Pat. No. 4,669,630).**

Kenyon discloses a plastic lid (FIG. 2) for a can of the type which comprises a tubular body having a lower end and an upper end (FIG. 1) carrying a seat for the hermetic seating of a lid (upper left corner in FIG. 3) which comprises, in a single piece, a sealing portion (FIG. 2), removably seated and retained in the seat (FIG. 3) and which is provided with an external edge projecting radially outwardly from the seat (FIGS 1-2); a tamper evident portion comprising a lower skirt, to be seated around part of the upper end of the tubular body and which is superiorly incorporated, through bridges, to the external edge of the sealing portion (column 2 lines 30-35, FIG. 6), the tamper evident

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portion presenting an interruption extending along at least part of the height of the lower skirt (FIGS. 1-2), the sealing portion incorporating, at its external edge, a gripping tab projecting through said interruption of the tamper evident portion (FIG. 6), said bridges being broken when submitted to a certain pulling force, which separates the tamper evident portion from the sealing portion upon the first opening of the lid, characterized in that the bridges are axially disposed around a circumferential extension of the upper end of the tubular body, in order to connect an upper edge of the lower skirt with the external edge of the sealing portion in points which are angularly spaced apart, said gripping tab maintaining a gap with the lower skirt (FIGS. 5-7, column 2 lines 50-70); wherein the external end of the sealing portion incorporates a small cylindrical lower flap surrounding a circumferential extension of the upper end of the tubular body from which the bridges depend (column 2 lines 30-35, FIG. 6); wherein the upper end of the tubular body secures, by a double seam, an annular wall in which is defined the seat for the seating of the lid, characterized in that the lower skirt incorporates an internal circumferential projection, axially spaced from the external edge of the sealing portion and which is dimensioned to be seated and axially locked under the double seam, around the tubular body (upper left corner in FIG. 3); wherein the gripping tab is substantially leveled with the lower skirt (FIG. 6); wherein the tamper evident portion comprises at least one breakable lock connecting the gripping tab with the lower skirt (column 3 lines 1-11, FIG. 2); wherein the lower skirt incorporates the ends of a bridge, circumferentially extending over the interruption of the tamper evident portion and over the gripping tab, a first end of said ends of the bridge being incorporated to the lower

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skirt through connecting means which are broken when said first end is forced away from the lower skirt, in order to liberate the manual access to the gripping tab (FIGS. 2-5; column 2 line 50 – column 3 line 11); wherein the bridge has its first end superposed to the lower skirt and incorporated thereto by two connecting means which are circumferentially spaced apart (FIGS. 2, 5, 6; column 3 lines 1-11); wherein the upper end of the sealing portion incorporates a circumferential upper rib, projecting over the upper end of the tubular body, so as to fit loosely and telescopically in the lower end of another tubular body stacked over said tubular body (FIGS. 3, 6; column 3 lines 12-20).

The applicant is reminded that Claim preamble language may not be treated as a limitation where it merely states an intended use of the system and is unnecessary to define the invention, (*Catalina Marketing Int'l Inc. v. Coolsavings. com Inc., Fed. Cir., No. 01-1324, 5/8/02*). Furthermore, a claim containing a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior apparatus teaches all the structural limitation of the claims (*In re Schreiber, 128 F.3d 1473, 1477-78, 44USPQ2d, 1429, 1431-.2 (Fed. Cir. 1997); Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990); Ex parte Masham, 2USPQ 2d 1647 (Bd. Pat. App. & Inter. 1987)*).

### **Conclusion**

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-3545. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NW

/Anthony D Stashick/  
Anthony D Stashick  
Supervisory Patent Examiner, Art Unit 3781